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**U.S. Citizenship
and Immigration
Services**

C-1



FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: **AUG 02 2004**

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(4), to perform services as an associate pastor and Sunday school superintendent. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not established its ability to pay the beneficiary's salary.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

(i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

(ii) seeks to enter the United States--

(I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

(II) before October 1, 2008, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

(III) before October 1, 2008, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The regulation at 8 C.F.R. § 204.5(m)(1) indicates that the "religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition." 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to demonstrate that, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work. The petition was filed on October 4, 2002. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of an associate pastor and Sunday school superintendent throughout the two years immediately prior to that date.

██████████ president and CEO of the petitioning church, states that the beneficiary "has been assisting our organization for the past three (3) years as a visitor ██████████ since he resides in Ciudad ██████████" not far from the petitioning church in El Paso, Texas.

Because the initial petition contained no documentation to corroborate the petitioner's claims, the director requested additional evidence. In response, ██████████ asserts that the beneficiary "has been spending

approximately 36 hours per week with our congregation as a volunteer since we can not pay him salary since he is not a legal resident." Clearly, the beneficiary's work for the petitioner has not been the source of the beneficiary's livelihood during the qualifying period, and has amounted, in essence, to extensive volunteer work rather than a vocation or occupation.

The petitioner submits a letter from an official of [REDACTED] indicating that the beneficiary has worked for that company as a maintenance technician, earning \$365 per month, since July 1998. The letter is dated April 25, 2003, indicating that the beneficiary worked as a maintenance technician throughout the two-year period that ended October 4, 2002. The petitioner also submits a copy of a certificate showing that the beneficiary completed his studies toward a Bachelor of Theology degree in December 2002, several weeks after the petition's filing date.

The director, in denying the petition, observed that the beneficiary was both a maintenance technician and a theology student during the qualifying period. On appeal, the petitioner maintains that the beneficiary has consistently worked 36 hours a week for the petitioner.

The statute and regulations require that the beneficiary must have worked *continuously* in the religious occupation or vocation. The term "continuously" has been interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948). Here, the beneficiary has worked in the occupation of a maintenance technician. The fact that the beneficiary also, during the same period of time, has been studying for his bachelor's degree in theology indicates that his training was incomplete.

For the above reasons, we cannot find that the beneficiary was working continuously as a fully-qualified associate pastor during the two-year qualifying period.

The other basis for denial concerns the petitioner's ability to pay the beneficiary's salary. The petitioner has offered the beneficiary a salary of \$500 per week, or roughly \$26,000 per year.

The regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements. In a case where the prospective United States employer employs 100 or more workers, the director may accept a statement from the financial officer of the organization which establishes the prospective employer's ability to pay the proffered wage.

The initial submission contained no financial documentation at all. The director requested evidence of the petitioner's ability to pay the proffered wage. In response, Pastor Sotelo has asserted that the petitioner's "annual income is estimated at approximately \$120,000.00 and we foresee no problem in paying [the beneficiary's] salary." Once again, no financial documentation accompanied this response. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The director denied the petition in part because of the absence of evidence to show the petitioner's ability to pay the beneficiary's salary. On appeal, the petitioner submits a letter from its treasurer, [REDACTED] who asserts that the petitioner's "annual income exceeds \$120,000." [REDACTED] asserts that the church's only salaried employees are [REDACTED] and his wife, [REDACTED].

The above-cited regulation at 8 C.F.R. § 204.5(g)(2) states that evidence of ability to pay "shall be" in the form of tax returns, *audited* financial statements, or annual reports. The petitioner is free to submit other kinds of documentation, but only *in addition to*, rather than *in place of*, the types of documentation required by the regulation. In this instance, the petitioner has not submitted any of the required types of evidence. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). The petitioner's treasurer attests that sufficient funds are available, but a statement from a financial officer is acceptable (at the director's discretion) only in instances where the employer employs at least 100 people; this petitioner employs two people.

Because the petitioner has not complied with the requirements of 8 C.F.R. § 204.5(g)(2), we concur with the director that the petitioner has not demonstrated its ability to pay the beneficiary's salary.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.